FARAD CONTINUATION SHEET NO.:

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE SIDE

SECOND APPEAL NO.214 OF 2007
Along with
CIVIL APPLICATION NO.1374 OF 2006
IN
SECOND APPEAL NO.214 OF 2007

Office Notes, Office Memoranda of coram, appearances, Court's orders or directions and Registrar's orders.	Court's or Judge's orders.

Mrs Anita A Agarwal, for the appellant.
Mr S.M.Railkar, for respondent no.7

CORAM : D.B.BHOSALE,J.
DATED : 18th SEPT., 2007

P.C.:

Heard learned counsel for the parties.

This second appeal is directed against concurrent findings of the courts below by which a suit filed by the appellant/plaintiff for specific performance of an agreement for sale stands dismissed. The trial Court had partly decreed the suit, holding that the plaintiff is entitled for refund of an earnest money from defendant nos 1 to 6. It appears that during pendency of the suit itself, four defendants had died and their heirs were not brought on record.

Keeping that in view, the appellate court while dismissing the appeal set aside the part of the decree by which the defendants were directed to refund the earnest money to the appellant on the ground that the suit had abated in its entirety not only in respect of the claim for specific performance but also in respect of the claim for refund of the earnest money. That part of decree has become inexecutable and, therefore, the plaintiff is not entitled to claim even the earnest money. The view taken by the appellate courts is fortified by the decision of this Court in Pandurang Sadashio Patil Vs. Pandurang Chimnaji Patil, 1983 Mh.L.J.460. I find no error of law in the view taken by the appellate court. The findings recorded by the courts below are entirely based on the evidence on record. No substantial question of law is raised in the appeal. In the circumstances, the appeal is dismissed. As a consequence thereof, the civil application stands disposed of.

(D.B.BHOSALE,J.)